Supreme Court, U.S.
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No.

IN THE
Supreme Court of the United States

FRANCES YOUNGER,

Petitioner,

v.

COLLIN YOUNGER, SR.,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS OF MARYLAND

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Did the State of Maryland violate the Petitioner's Fifth Amendment marital property rights, by refusing to address the Respondent's selling of a four-unit apartment building, and refusal to account for rental income derived from that property for a period of thirteen years?

Did the State of Maryland violate the Petitioner's Fourteenth Amendment due process rights when the trial judge refused to stay the divorce hearing, allowing the Petitioner the opportunity to appeal the trial's court's denial of her request for modification of her alimony award, in order to properly valuate the marital estate, as required by the Maryland Property Act?

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PETITION FOR WRIT OF CERTIORARI

Petitioner, Frances Younger respectfully petitions this Court for a writ of *certiorari* to the Maryland Court of Appeals. The Maryland Court of Appeals has previously denied her request for writ of *certiorari* without written opinion.

OPINIONS BELOW

The Maryland Court of Special Appeals, the intermediate appellate court in the state, affirmed the trial court's ruling (The Honorable Sean D. Wallace), that the trial court did not commit constitutional error by conducting a merits hearing on April 23, 2003, granting an absolute divorce to Respondent Collin Younger, Sr., awarding the Petitioner twenty three thousand ($23,000.00) dollars in the form of a monetary award, ordering that the marital home be sold and the proceeds divided evenly, and awarding each party one-third (1/3) of the other party's pension. The unreported opinion is included as part of the Appendix at App. pgs. 3a-13a.

JURISDICTION

The Order denying the Petitioner's request for a writ of Certiorari was entered on December 23, 2004. This Court has jurisdiction pursuant to 28 USC Section 1257.

CONSTITUTIONAL PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides:

No person. . . shall. . . be deprived of life, liberty, or property, without due process of law. . .

The Fourteenth Amendment to the United States Constitution provides:

. . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law. . .

MARYLAND STATE STATUTES INVOLVED

Ann. Code. Md. FAMILY LAW Section 8-201 Property Disposition in Annulment and Divorce (1999).

Ann. Code Md. FAMILY LAW Section 8-204 (1999). **Valuation**.

(a) ***Determination by court***—Except as provided in subsection (b) of this section, the court shall determine the value of all marital property.

Ann. Code Md. FAMILY LAW Section 8-205. Monetary award (1999).

Ann. Code. Md. FAMILY LAW Section 8-214. Award of reasonable and necessary expenses (1999).

Ann. Code. Md. COURT AND JUDICIAL PROCEEDINGS Section 12-303 (1999).

Md. R. Civ. Proc. FAMILY LAW ACTIONS Section 9-207 Joint Marital Property Statement (2003).

STATEMENT OF THE CASE

The case at bar is a divorce action. Maryland, like all states, endeavors to determine the property rights of parties who are going through the divorce process. Maryland has enacted several statutes regarding how a trial court should distribute marital property. App. at pgs. 58a-66a.

In Maryland, marital property is property no matter how titled, acquired during the marriage. FL Section 8-201 (1999). In a divorce action, the trial court lacks the statutory authority to transfer title to real property in a divorce action. For example, if the Husband places real property acquired during the course of the marriage solely in his name, the trial court cannot give the Wife the real property in a divorce proceeding. The trial court can award the Wife a monetary award for the value of real property based upon what the court deems is equitable.

In order for the court to grant a spouse a monetary award, the parties must submit a Joint Marital Property Statement suggesting the valuation of all marital property as defined by statute. App. at 26a. Maryland requires that counsels for both parties sign the marital property statement, and that it **must** be submitted at a minimum ten days prior to trial [emphasis added]. This requirement is critical because the only property that a court can consider must be included on the parties' Joint Marital Property Statement. In other words, if the property is not on the statement, the court cannot determine a monetary value for that property. The only exception to this rule is that if one party has dissipated marital property, the trial court has the authority to treat the property as "extant property", and can place a monetary value on the property as if it still exists, *McCleary v. McCleary*, 150 Md. App. 448, 882 A.2d. 460 (2003).

In the case at bar, the parties could not agree to a final submission of the Joint Marital Property Statement, prior to the divorce hearing which was conducted on April 23, 2003, owing to the fact that the Respondent, Collin Younger Sr. had sold a four-unit apartment building situate in the District of Columbia for its extrapolated tax assessed value. App. at 48a. In addition, the Respondent refused to account for thirteen years of rental income on the rental property prior to the sale of the building. App. at pgs. 32a-42a. Given these discrepancies, the Petitioner would not sign the Marital Property Statement submitted in **open** court the day of the scheduled hearing. The State Court's Opinion suggests that the Joint Marital Property Statement was submitted ten days prior to the hearing, when in fact it was not. Petitioner filed the appropriate Motion to Correct the Record regarding the actual submission date of the Joint Marital Property Statement, but the Maryland Court of Special Appeals refused to correct its record. App. at pgs. 14a-25a.[1] Petitioner also refused to put on evidence during the actual divorce hearing and argued that it was unconstitutional for the court to proceed to a merits hearing when he [the trial judge] had actual notice that the husband had dissipated marital property. The trial judge ordered the Petitioner to commence trial and put on her case. As previously mentioned, Petitioner refused to do so. Indeed, this Court has ruled that a party is under no obligation to obey an unconstitutional order, *NAACP v. Alabama* 357 US, 449 (1957). In the case at bar, Ms. Younger refused to participate in a hearing she deemed violative of her constitutional rights.

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[1] Where there is a factual discrepancy present in a case, and the court is asked to decide an important constitutional right, this Court has the authority to review the case record for itself in order to determine whether or not the factual discrepancies do in fact exist, and if those factual discrepancies are important in deciding the federal question, *Fiske v. Kansas*, 274 U.S. 380 (1926).

By way of background, Petitioner Frances Younger was married to Respondent Collin Younger Sr., on January 10, 1961. The parties have two children, born in 1964, and 1967. *Id.* at 2. In 1990, Respondent vacated the marital home. Petitioner submits that the Respondent moved in with his long term mistress, Teresita Beverage.[2] (E.93).

Between 1990 through 1997, Mr. Younger directly supported Ms. Younger. At the time of the separation in 1990, Appellee was a Captain with the District of Columbia Police Department. Mr. Younger was also an active Reservist in the United States Armed Services, and had achieved the Rank of Command Sergeant Major. (E.9-11). The claim of adultery if proved, carries with it the possibility of dishonorable discharge from the armed services, and the parties agreed that neither would seek a divorce, and that Mr. Younger would continue to maintain the marital home (E. 9-11).

In 1994, due to poor health Petitioner, Frances Younger retired from the United States Department of Justice. Because she retired early her pension at the time of the divorce hearing was a mere $633 a month. *Id.* at 3.[3] In 1997, after Mr. Younger retired from the Metropolitan Police Department, he informed Ms. Younger, that he would no longer provide financially for her and the couple's daughter Annette and her family moved into the marital home, which allowed Ms. Younger to remain there. *Id.* at 3. When Annette and her family purchased their own home, unable to financially support herself, Mrs. Younger moved in with them.

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[2] "E." references refer to pleadings contained in the joint record extract submitted in State Court.

[3] Currently, Petitioner receives $773 a month in pension benefits.

After Mr. Younger stopped supporting his wife financially, he approached Ms. Younger about agreeing to an uncontested divorce, and she refused. (E.9-11). In July of 1998, Ms. Younger filed for an absolute divorce in Circuit Court for Anne Arundel County, Maryland, where Mr. Younger lived, but she could not locate him to effect service of process. *Id.* at 3. In December of 1998, she renewed her complaint for an absolute divorce. By consent of the parties the case was eventually transferred to Circuit Court for Prince George's County, Maryland. The case was later dismissed pursuant to Maryland Rule 2-507(c) for lack of prosecution. Given her impoverished condition, Ms. Younger was unable to find counsel willing to assist her any further. (E.9-11).

On December 19, 2001, Ms. Younger filed a complaint for support and maintenance. On March 14, 2002, the case was placed on the contested docket. However, Mr. Younger was granted a continuance, and later filed a counter-claim for absolute divorce. *Id.* at 4. On June 26, 2002, the trial court conducted a pendente lite hearing and awarded Ms. Younger **$1,000.00** per month in support effective July 1, 2002. *Id.* at 4. It was determined at that hearing by Mr. Younger's financial statement that his monthly income was approximately eleven thousand two hundred nine dollars and fifty cents **($11,209.50)**.(E.396). By comparison, Ms. Younger had a monthly income of six hundred and sixty-three dollars **($663.00)** [emphasis added]. (E. 13).

The Court's Opinion is correct that in the complaint for support and maintenance Mrs. Younger alleged that the parties separated on May 15, 1990, requested alimony, and stated that Mr. Younger had deserted her. *Id.* at 4. The Opinion is not factually correct as to when Ms. Younger raised the issue of dissipation of the marital estate. Ms. Younger raised the issue of dissipation on April 22, 2003, in her Motion for Continuance and Modification of Alimony to

include Reasonable and Necessary Expenses after the deposition of Mr. Younger. App. at 32a-49a.[4] In her Motion for Reconsideration, Ms. Younger asked the Court to correct its record regarding when the issue of dissipation was first raised, but the Court refused, issuing an Order of denial without written explanation. App. at 2a.

After the pendente lite hearing, a scheduling conference was set for October 9, 2002, but once again, Mr. Younger obtained a continuance, and the conference was rescheduled for November 13, 2002, and a merits trial was set for April 23-24, 2003. *Id.* at 5. Prior to the merits hearing, on February 23, 2003, Ms. Younger filed a motion to compel discovery, and requested a modification of her alimony award to include twenty thousand dollars ($20,000.00), which she required to properly valuate the marital estate. *Id.* at 5. In response, Mr. Younger filed for a protective order. *Id.* at 5. Ms. Younger had not responded to Mr. Younger's discovery requests owing to the fact that she had been out of the area caring for her elderly mother, and she submitted an Affidavit in support of her claim. (E.80).

On March 11, 2003, the trial court scheduled a telephone conference to hear arguments on the discovery issue. Both parties were given until March 24, 2003, to turn over the requested documents. *Id.* at 6. However, counsel for Petitioner requested a hearing on her request for suit money, which was denied by the trial court. *Id.* at 6. The order from the court failed to mention Petitioner's request for a hearing on suit

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[4] Although the actual motion submitted to the trial court contained the deposition of Mr. Younger, it is not included in the appendix herein for one simple reason, the cost of reproduction. Ms. Younger is impoverished, and her Church, family and friends have donated funds for the preparation of this writ.

money or her request for a continuance, necessitating the filing of a Motion to Alter or Amend the Court's Order, which was filed on March 18, 2003. *Id.* at 6. The Court's order did state that Mr. Younger was to be deposed by April 14, 2003.

The next day, March 12, 2003, the parties appeared for a settlement conference which proved fruitless owing to the fact that both parties had until March 23, 2003, to turn over their respective discovery. At the settlement conference the parties agreed that Mr. Younger would be deposed on April 14, 2003. *Id.* at 6. The order from the trial court did not include the fact that the case should be left on the contested case docket, owing to the fact that Petitioner was seeking a divorce on the grounds of adultery, and failed to clarify what property issues were in dispute. Given these defects in the court order, Petitioner filed another Motion to Alter or Amend the Court's Order, and stated therein that she would be renewing her request for suit money. (E.101). Both motions to alter or amend were unopposed, but neither was granted.

When Petitioner received Mr. Younger's documents she learned that Mr. Younger had sold, during the pendency of the divorce litigation, a four unit apartment building in the District of Columbia, and was refusing to account for the rental proceeds generated on that property prior to sale.[5] The parties had previously agreed at the settlement conference which occurred on March 12, 2003, that Mr. Younger would be deposed on April 14, 2003. Petitioner opines that Mr.

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[5] Noticeably, the state court's opinion could not be correct as to when the Petitioner raised the issue of dissipation because the discovery submitted to the Petitioner indicated that the sale occurred in October, 2002. App. at 48a. However, the Respondent did not release the actual property settlement documents to the Petitioner, and the Petitioner was forced to subpoena the necessary documents to verify when the sale had actually occurred.

Younger did not want to be questioned about why he sold the real estate, or why all of the parties' assets were solely in his name, which explains why he sought a protective order. App. at pgs. 55a-57a.

After Mr. Younger's deposition, Ms. Younger renewed her motion for a modification of suit money. Trial in the instant case was set for April 23, 2003. However, owing to the fact Mr. Younger was deposed in San Antonio, Texas, where he resides, the deposition was conducted via videoconferencing, and Petitioner's counsel did not receive the transcript until the eve of trial. Petitioner was not able to renew her request for suit money until April 22, 2003. However, in her Motion to Alter or Amend the court's order of March 11, 2003, both parties and the court knew that Petitioner would be renewing her request for suit money and seeking a continuance.

Petitioner's Motion for Continuance and Modification of Alimony Award to Include Reasonable and Necessary Expenses was denied in open court on April 23, 2003. As previously mentioned herein Petitioner refused to participate in the hearing. A unanimous panel for the Court of Special Appeals affirmed the trial judge.

REASONS WHY THE WRIT SHOULD BE GRANTED

Summary

Despite the growing numbers of women entering into the workplace, few would argue with statistics which suggest that women and children comprise the two largest groups currently living in poverty in the United States, Martha Albertson Fineman, *Cracking the Foundational Myths: Independence, Autonomy, and Self-Sufficiency*, American University, Washington College of Law, J. of Gender Social Policy & Law, Vol. 8:pgs. 13-27 (2000).

Recently, some scholars have begun to argue that policy discussions, and the laws that are derived from those discussions pay little attention to how families, and the ever expanding definition of what comprises a "family" are truly functioning. *Id.*

It is also true that recently more women are beginning to leave the work force to care for minor children, sick parents, or because of poor health and are therefore becoming more financially dependent on their spouses or other family members. *Id.* at 18. The question presented in this case, one which is becoming an increasing concern nationally, is who should provide financially for caretakers.

Recognizing that the return to dependency could result in increasing demands on our current welfare system, many States, and the State of Maryland is one of them, have begun to enact legislation to ensure, at least in the context of divorce proceedings, that trial courts begin to allow dependent spouses access to marital income in order to protect their interests in the marital estate.[6] By doing so, it becomes far less likely that caretakers and dependent spouses will have to access state sponsored social services. *Id.* at 20[7]

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[6] This Court has ruled that a State legislature may enact alimony statutes so long as there is a rational basis for doing so, and the statute itself is narrowly tailored so as not to offend the due process clause of the Fourteenth Amendment, *Orr v. Orr* 440 U.S. 268 (1978). *See Also*, Family Law Section 8-214 at APP. 61a.

Prior to the enactment of Family Law Section 8-214, a party had to prevail at trial before she could be reimbursed for legal fees and costs in a divorce case.

[7] Professor Fineman further suggests that as a result of not having the economic support required to support and maintain themselves, many caretakers often find themselves impoverished and severely compromised.

The case at bar presents the Court with the opportunity to address this trend. Petitioner, Frances Younger, retired early from the Department of Justice due to poor health. See pg. 7. herein. Throughout the course of the parties' marriage, Respondent Collin Younger Sr. maintained the marital estate. App. at pgs. 32a-53a. Petitioner, like many women of her generation, was a dependent spouse. Even when she was working her modest income was not used to maintain the marital estate. She comes before this Court in an impoverished condition, such that an Opinion from the Court would give states guidance on how to constitutionally implement statutes addressing the needs of dependent caregivers.

In addition, the opinion issued by the Court of Special Appeals is not in compliance with this Court's longstanding jurisprudence regarding property interests and due process requirements. Petitioner first submits below that she had a marital interest in the property that Mr. Younger had dissipated.

I. The State of Maryland violated the Petitioner's Fifth Amendment marital property rights.

A. The Opinion issued by the Maryland Court of Special Appeals disregards this Court's legal precedent regarding protections of fundamental rights.

The Fifth Amendment guarantees that a United States citizen shall not be deprived of property without due process of law. The nature of the "property" interest to be afforded constitutional protection is often not defined in the constitution itself, but is derived from an independent source, such as state law, *Board of Regents v. Roth*, 408 U.S. 564 (1971). As such, it is permissible for this Court to examine Maryland law in the area of dissipation in order to determine whether or not, the Petitioner's Fifth amendment rights were indeed violated.

The gravamen of the Petitioner's appeal is that the trial judge refused to address the problem of Mr. Younger having either hidden or dissipated substantial marital property, and failed to appreciate Petitioner's remedy long established by Maryland case law, namely, her right to place an "extant value" on the property the Respondent had sold or hidden. App. at pgs. 32a-53a, *See Also* (E.171-186). A brief discussion of dissipation is required.

In Maryland, dissipation has been defined as the expending of marital assets for the principal purpose of reducing the funds available for equitable distribution, *McCleary v. McCleary*, 150 Md. App. 448, 882 A.2d. 460 (2003).[8] This is especially egregious when property is sold during the pendency of the litigation, for other than a marital purpose.

Under Maryland Law, the party alleging dissipation has the initial burden of production and the burden of persuasion. However, once the moving party meets their burden, the non-moving party who dissipated the marital asset or spent marital funds, has the burden of demonstrating that it was for a marital purpose. *Id.*

In the instant case, Petitioner met her burden of both production and persuasion in two ways. First, Petitioner established that the real property was sold for its tax assessed value. The property was not sold for its fair market value. This is usually frowned upon by Maryland Courts, since in Maryland a court may not use the tax assessed value of real property in determining its fair market value, *Gravenstine v. Gravenstine*, 472 A.2d. (1984). Restated, the trial court could

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[8] *McCleary* specifically addresses awarding reasonable and necessary expenses when there has been substantial dissipation of the marital estate. *See Also, Rock v. Rock*, 587 A.2d. 1133 (1991), and *Sharp v. Sharp* 473 A.2d 499 (1984).

not use the tax assessed value as the Respondent had proposed in determining the fair market value of the property, as this is plainly forbidden by Maryland Law. Additionally, the parties had used the building and another condominium (which the Respondent has recently sold) as rental properties, generating rental income.

Furthermore, the extant value of the rental property income also needed to be determined as the Appellee either would not or could not account for thirteen (13) years of rental income proceeds. (E.108-109).

Second, Petitioner established that the rental income proceeds, and the real property which was sold, was not done for a marital purpose, and was controlled exclusively by Mr. Younger. This was proven through the Respondent's own deposition testimony. (E. 171-E. 186).

At the hearing on Ms. Younger's Motion for Continuance and Modification of Alimony, held April 23, 2003, which took place immediately prior to the scheduled divorce trial, the Petitioner's claim of dissipation was **uncontradicted** by the Respondent [emphasis added]. Restated, Respondent offered no evidence to contradict Petitioner's argument and proof that dissipation had in fact occurred. Based upon the dissipation which had occurred, the parties could not agree to a Joint Marital Property Statement. In fact, the trial judge received into evidence the Respondent's proposed Marital Property Statement during the motions' portion of the hearing.

Petitioner's argued that expert testimony was required to establish the extant value of both the property which had been sold, as well as the rental income proceeds generated from those properties, and undersigned counsel refused to adopt the Respondent's Marital Property Statement as the Respondent had proposed. Petitioner's submits to this Court that the State of Maryland violated her Fifth Amendment

constitutional rights by conducting a merits hearing in the first instance, when the court had actual knowledge of the Respondent's dissipation of marital assets.

In making the equitable property distribution, the trial judge found that Mr. Younger was in possession of "several hundred thousand dollars" in various accounts. (E. 385-386). However, the trial judge found that only a portion of these funds were marital, having been acquired after he vacated the marital home, *Alston v. Alston*, 582 A.2d. 754 (1991). Petitioner respectfully submits that this finding cannot be substantiated given that she was unable to introduce evidence to rebut Mr. Younger's assertion without waiving her objections to the trial judge conducting the merits hearing in the first instance. (E. 209-439). In her view, Mr. Younger had failed to rebut her contention either by evidence or proffer, that he had dissipated marital assets.

Ms. Younger submits to this Court that it was constitutional error for the trial court to attempt to calculate the marital estate without resolving the issue of dissipation, as specifically required by Maryland Law, *Sharp v. Sharp*, 473 A.2d. 499 (1984). Furthermore, the trial judge's refusal to make Mr. Younger account for thirteen (13) years of rental income, in addition to the sale of real property, rendered the trial judge incapable of making an informed decision on what portion of the "several hundred thousand dollars" were marital and non-marital. *Id.*

B. The Maryland Property Act Mandates that the trial judge determine the value of the marital estate. The Petitioner's due process rights were violated when the trial judge relied solely on the Marital Property Statement submitted by the Respondent.

In pertinent part, Maryland Rules, Civil, FAMILY LAW ACTIONS Rule 9-207 (2003), Joint Statements of Marital and Non-Marital Property provides:

> **a. When required.** When a monetary award or other relief pursuant to Code, Family Law Article, Section 8-205 is at issue, the parties shall file a joint statement listing all property owned by one or both of them. The statement shall be filed at least ten days before the scheduled trial date or by any earlier date fixed by the court.

The Maryland Property Act (MPA) App. at pgs. 58a-62a., and the requirement that the parties file a Joint Marital Property Statement, was enacted to address the inequity of the old title system, *Schweizer v. Schweizer*, 484 A.2d. 267 (1984), by insuring that all marital property was accounted for by the parties, well prior to trial. In addition, Maryland Law provides that where there is a good faith dispute as to the value of marital property, Maryland Law requires the trial judge to resolve the issue, prior to trial, *Doser v. Doser*, 329 A.2d. 453 (1995). The requirement of the submission of a property statement well in advance of trial is designed in part to insure that the trial court equitably distributes all marital property. Here, Petitioner could not file a marital property statement because the Respondent, in her view, had dissipated marital property and refused to account for many years of rental income from the dissipated property.

Stating incorrectly, as the Court of Special Appeals did, that the Respondent's Marital Property Statement was filed on April 10, 2003, lead to the incorrect conclusion that Respondent's statement was timely filed, and since Petitioner filed no statement, the trial court's refusal to address the issue of dissipation was proper, when it clearly was not proper. Indeed this Court has said that the failure of a litigant to comply with a State's procedural rule, does not in and of itself stop this Court from addressing the federal claim, if the Court finds that the state did not or does not regularly follow its own procedure, *Barr ET AL. v. City of Columbia*, 378 U.S. 147 (1963), See also *Caldwell v. Mississippi*, 472 U.S. 321 (1984).

In the instant case, the trial judge did not adhere to the Maryland procedural requirement that a Joint Property Statement be submitted well in advance of trial, but rather elected to penalize Petitioner for her Motion for a Continuance and Modification of Alimony, stating that the motion came on the eve of trial. Op. at 11. Petitioner next submits to this Court that she was further deprived of due process of law when her request for a stay of the proceedings to allow for an immediate appeal, was not granted.

II. The Fourteenth Amendment due process clause entitled Petitioner to a stay of all proceedings while the Petitioner appealed the trial judge's denial of her modification of alimony request.

Petitioner submits that it was error, in part of constitutional dimension, for the trial court to have conducted a merits hearing after she had requested a stay of all proceedings and for leave to file an Interlocutory Appeal. The right to seek an *immediate appeal* of the denial of costs (suit money), which is a form of alimony, to cover reasonable and necessary expenses, is statutorily and constitutionally recognized. Specifically, the evidentiary hearing held on

April 23, 2003, violated Annotated Code of Maryland 12-303, and both the 5th Amendment and 14th Amendment of the United States Constitution.[9] Additionally, in Maryland, when a litigant raises constitutional arguments, the standard of review requires an independent constitutional appraisal, *Ebert v. Md. St. Bd. Of Censors*, 313 A.2d. 536 (1973); *See Also Lewis v. Warden* 296 A.2d. 428 (1972). The opinion issued by the state court applied an abuse of discretion standard to the actions of the trial judge, which Petitioner submits was also improper. In fact, this Court has said where there are fundamental rights at stake, and indeed the loss of one's property is a fundamental right, the due process clause requires a strict scrutiny analysis of those actions, *Lucas v. South Carolina*, 505 US 1003 (1992).

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[9] The trial court's oral ruling from the bench on April 23, 2003, made clear that the basis for its denial of the Petitioner's Motion for Continuance, and Motion for Modification of Alimony, was that it was filed on the eve of trial, and the Court's conclusion that Petitioner had not been diligent in pursuing discovery. While Petitioner's Supplemental Motion was filed on the day prior to trial, the original motion was filed February 26, 2003, nearly 45 days earlier. The Court's request for a separate written motion, which was only for the convenience of the Court, did not negate the substance of the earlier filed motion. Further, the trial court did not deny the earlier filed motion on either procedural or substantive grounds. Again, the Court simply asked for a separate motion. Furthermore, Petitioner also put the trial court, and Respondent on actual notice of her intent to pursue the remedy associated with Respondent's failure to make discovery, namely, her Motion to Compel, on February 26, 2003. Accordingly, Petitioner respectfully submits that the trial court's stated rationale for denying Petitioner's motion, namely, its conclusion that Petitioner had not pursued discovery in a diligent manner, was wrong.

It is a well settled principle of Maryland Law, a principle established more than 100 years ago, that the denial or grant of alimony and costs by a tribunal is subject to immediate appellate review prior to a trial on the merits. *Chappell v. Chappell*, 86 Md. 532, 39 A.2.d 984 (1898). This principle is further recognized in Maryland statutory law. Annotated Code of Maryland, Courts and Judicial Proceedings, Section 12-303 (2000 ed.).

In interpreting the aforementioned provision, Section 12-303, the Maryland Court of Appeals has clearly held that the right to seek *immediate appellate review* of some interlocutory orders (i.e., the Court's Order denying suit money) is necessary to ensure that a party not suffer harm from an order of a court which would infringe upon a constitutional right, *Pulley v. State*, 287 Md. 406, 412 A.2d. 1244 (1980). Petitioner submits that the trial judge's refusal to award her reasonable and necessary expenses was a refusal to award a payment of money, which is governed by 12-303 (3)(v). Alimony is indeed a property right or interest emanating out of the marital relationship. Reasonable and necessary expenses, hereinbefore and after referred to as "suit money", is a form of alimony. *Chappell*, 532, at 536. To deny suit money is thus identical to denying a request for alimony.

Petitioner clearly had, under Maryland law, an immediate right to appeal. Accordingly, it is clear that the trial judge's denial of Petitioner's request to permit her an immediate appeal of the court's denial of her request for suit money, violated Maryland law.

In fact, in *Knott v. Knott*, 806 A.2d. 768 (2002), the Court of Special Appeals reasoned that the history of 12-303 indicates a legislative intent to allow interlocutory appeals for the "payment of money" which had been traditionally rendered in equity, *Id.* at 245. Alimony has long been relief that a litigant could pursue in a court of equity. Given that the

right to appeal an award (or denial) of alimony (of which suit money is a form), is clearly provided for in Maryland statutory and case law, the refusal of the trial court to permit an immediate appeal prior to deciding the case was constitutional error.

Indeed, a Federal Court has recently held that the constitutional requirement of procedural due process only applies to an interest within the Fourteenth Amendment's protection of liberty and property, *Bosley v. Baltimore CTY.*, MD. 804 F. Supp. 744 (D.Md. 1992) at 748-749. The trial judge informed counsel for Petitioner during a teleconference with opposing counsel, which occurred on March 11, 2003, that he **would not** schedule a hearing on the issue of suit money until **after** March 24, 2003, because he would be ordering both parties to fully disclose **all** financial assets. Undersigned counsel requested a stay of all proceedings at that time [emphasis added]. The trial judge then requested that undersigned counsel submit a supplemental request for suit money and a **continuance** of the trial date. However, as previously mentioned, the trial judge's Order of March 11, 2003, **omitted any mention of the fact that he had asked undersigned counsel to submit a supplemental request for suit money and a continuance [emphasis added]**.

On or about March 18, 2003, undersigned counsel filed Plaintiff's Motion to Alter or Amend the Court's Order, a motion which was **unopposed**. That motion placed the trial judge and Respondent on notice that Petitioner required twenty thousand dollars ($20,000.00) in order to properly prepare for trial. Why is suit money so critical for Petitioner? The parties were married in 1961. Petitioner, like most women of her era, did not handle the finances and did not know much about the parties' finances. Respondent admitted as much. (E. 171-186).

During his deposition which occurred on April 14, 2003, Respondent testified that Petitioner considered it to be his responsibility to make money for the family. (See Dep. Tr. at pg. 38, lines 5-7). Respondent also refused to disclose how much money he had collected in rental proceeds since 1990. (Tr. at pg. 58, lines 19-25; see also, Tr. pg.59, lines 1-15; see also, Tr. pg. 60, lines 1-25; see also, Tr. pg. 61, lines 1-25; see also, Tr. 62, lines 1-25, see also Tr. pg. 63, lines 1-25; see also Tr. Pg. 64, lines 1-25). (E. 171-186).

Respondent also stated that he had approximately 400 pages of financial documents that he had provided to Petitioner. (Tr. at pg. 68 lines 17; see also Tr. Pg. 69, lines 1-25). The Respondent also instructed his tax preparer not to disclose his tax returns. (Tr. Pg. 71 lines 1-25; see also Tr. pg. 72 lines 1-25; see also Tr. at pg 74, lines 1-25). Finally, when Petitioner inquired into the whereabouts of Teresita Beverage, his mistress, the Respondent refused to answer those questions. Tr. pg. 46, lines 10-25; see also Tr. pgs. 1-25; see also Tr. pgs. 1-25). (E. 171-186).

CONCLUSION

Petitioner was not given a reasonable opportunity to protect her interests in the marital property that the parties had jointly acquired. The judgment of the Maryland Court was unconstitutional for the reasons stated herein. Petitioner submits that the actions of the State of Maryland violated her Fifth and Fourteenth Amendment constitutional rights. In addition, Petitioner submits to this Court that she is similarly situated to many other caregivers or dependent spouses who find themselves after divorce proceedings, living in poverty. Petitioner asks that the case be reversed and remanded.

Respectfully submitted,

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Attorney for Petitioner

March 23, 2005

APPENDIX

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FRANCES YOUNGER	*	IN THE
	*	
	*	COURT OF APPEALS
v.	*	
	*	OF MARYLAND
	*	
COLLIN L. YOUNGER SR.	*	Petition Docket No. 458
	*	September Term, 2004
	*	
	*	(No. 653, Sept. Term, 2003,
	*	Court of Special Appeals)

ORDER

Upon consideration of the petition for a writ of certiorari to the Court of Special Appeals, the supplement and the answer filed thereto in the above entitled case, it is

ORDERED, by the Court of Appeals of Maryland, that the petition and supplement be, and they are hereby, denied as there has been no showing that review by certiorari is desirable and in the public interest.

/s/ Robert M. Bell

Chief Judge

Date: December 23, 2004

FRANCES YOUNGER	*	IN THE
	*	
Appellant,	*	COURT OF SPECIAL
	*	APPEALS
v.	*	
	*	No. 653
	*	
COLLIN L. YOUNGER SR.	*	September Term, 2003
	*	
Appellee.	*	

ORDER

Upon consideration of Appellant's Motion for Reconsideration of the Court's unreported opinion filed on August 27, 2004 in the captioned appeal, it is this 27th day of October, 2004, by the Court of Special Appeals,

ORDERED that the Motion is denied.

For a panel of the Court

CHIEF JUDGE'S SIGNATURE
APPEARS ON ORIGINAL ORDER

CHIEF JUDGE

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 653

September Term, 2003

FRANCES YOUNGER

v.

COLLIN YOUNGER, SR.

Sonner, *
Eyler, Deborah S.,
Thieme, Raymond G., Jr.
(Ret'd, Specially Assigned)

JJ.

Opinion by Sonner, J.

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*Sonner, J. participated in the hearing and conference of this case while an active member of this Court; he participated in the adoption of this opinion as a retired, specially assigned member of this court.

Filed: August 27, 2004

On April 23, 2003, the Circuit Court for Prince George's County granted an absolute divorce to Mr. Collin Younger, Sr., and terminated the *pendente lite* alimony award to Ms. Frances Younger. The court ordered the following: one-third of each of the three pensions to be paid to the non-holder of the pension; sale of the marital home, with the proceeds to be divided equally; and $23,000 cash paid by Mr. Younger to Ms. Younger. The court denied their requests for attorneys fees. On May 5, Ms. Younger filed motions for a new trial, to alter or amend judgment, and to stay judgment pending appeal; the court denied her motions on May 8.

While Ms. Younger presents six questions for our review[1], we choose to use the three questions put forth by Mr. Younger in his brief.

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[1] Ms. Younger presented six questions for our review:

I. Whether the Trial Court's refusal to permit Appellant the opportunity to file an Interlocutory Appeal from the decision to deny Appellant's request for alimony (suit money for payment of reasonable and necessary expenses), as permitted by Maryland Annotated Code 12-303, Courts and Judicial Proceedings, and *Chappell v. Chappel*, 86 Md. 532, 39 A.2d. 984 (1898), prior to conducting a merits hearing, was error?

II. Whether the Trial Court's decision to deny Appellant's request for suit money, which was needed to value three (3) martial pensions (two earned by Appellee), to inestigate the business transactions between the Appellee and his mistress involving the use of marital funds, to provide an extant value of marital [real] properties dissipated during the litigation, and to trace the source of several hundred thousand dollars in funds maintained in bank accounts which Appellee claimed were non-marital, where the uncontradicted record submission of Appellant revealed that Appellee had wilfully refused to make complete discovery of financial records bearing heavily on the value of the marital estate (as required by Court Order), and refused to account for rental income estimated at several hundred thousand dollars, collected from three (3) marital properites owned for more

I. Did the chancellor abuse his discretion or was he clearly erroneous in denying the wife's motion for continuance of trial, and request for suit money?

II. Did the chancellor abuse this discretion or was he clearly erroneous in denying the wife's request for a stay of proceedings so as to allow the wife the opportunity to file an interlocutory appeal from the chancellor's decision denying the wife's request for a continuance and for suit money?

III. Did the chancellor abuse his discretion or was he clearly erroneous in granting the husband an absolute divorce, determining the marital and non-marital property of the parties, granting the wife a monetary award in the amount of $23,000 as an adjustment of the equities and the rights of the parties concerning marital property and denying the wife's request for a continuation of pendente lite alimony, pending appeal, and for permanent alimony?

---

than twelve years, and where Appellee had exclusive possession and control of the income from the marital properties, was error?

III. Whether the Trial Court's property award, including a monetary award to Appellant of twenty-three thousand dollars ($23,000), being based in part on tax assessed values of marital real property, and incomplete bank statements, was error?

IV. Whether the Trial Court's denial of an unopposed Motion for Stay of the Proceedings Pending Appeal, was error?

V. Whether the Trial Court committed error by dismissing the Appellant's fault based divorce petition after the Appellant requested a Stay of All Proceedings pursuant to Courts and Judicial Proceedings Article, Section 12-303.

VI. Whether the Trial Court committed error by finding that the Appellee has acquired nonmarital property after he vacated the marital home.

For the reasons that follow, we affirm.

FACTS

Frances and Collin Younger were married on January 10, 1961. They had two children: Annette, born in 1964, and Collin, born in 1967. After twenty-nine years of marriage, Mr. Younger vacated the marital home. Between 1990 and 1997, he continued to provide funds to support Ms. Younger; they did not file for a separation or divorce. During that time, Mr. Younger was an officer with the District of Columbia Metropolitan Police Department, and he served as an active member of the United States Army Reserves. Ms. Younger worked for the United States Department of Justice.

In July 1997, Mr. Younger told Ms. Younger that he would no longer provide financial support and sought an uncontested divorce. Ms. Younger could not afford to maintain the marital home because health problems had caused her to retire in 1994, and her pension provided only $633 each month. The couple's daughter, and her family, moved into the Youngers' home to enable Ms. Younger to remain in the home. Later, when Annette purchased her own home, Ms. Younger moved along with her and her family.

In July 1998, Ms. Younger filed for an absolute divorce in the Circuit Court for Anne Arundel County where Mr. Younger lived, but she could not located him to serve notice. In December 1998, she renewed the complaint for an absolute divorce. The case eventually was transferred by consent of both Mr. and Ms. Younger to the Circuit Court for Prince George's County. That case was later dismissed pursuant to Maryland Rule 2-507(c) for lack of prosecution.

On December 19, 2001, Ms. Younger filed a complaint for support and maintenance. On March 14, 2002, the court classified the case as "contested." The court scheduled a hearing for May 30; however, Mr. Younger then hired counsel,

moved for a continuance, and on June 17 filed a counterclaim for an absolute divorce. Mr. Younger asserted that he and Ms. Younger had been separated continuously and uninterruptedly since October 30, 1989. He requested that the court make a property determination, grant him a monetary award, and order a sale instead of a partition of the jointly-owned real property in Maryland.

On June 26, 2002, the court conducted a *pendente lite* hearing and awarded Ms. Younger $1,000 per month in support effective July 1. On July 15, Ms. Younger filed a supplemental complaint for absolute divorce. She said that Mr. Younger separated on May 15, 1990, and that he had committed adultery and deserted her. She asked the court to award permanent alimony retroactive to August 1, 1997, to determine the marital estate, and also award her a monetary judgment. She claimed that Mr. Younger dissipated marital assets, that he abandoned financial support to the marital home in order to support his mistress, and that he used marital assets to do so. She contended that he sold marital property at the tax assessed value, rather than the fair market value. She sought $20,000 in suit money to pursue discovery, based on her monthly income of $1,663 ($633 pension, and $1,000 *pendente lite* support), and Mr. Younger's monthly income of $11,209.50. She argued that she needed the funds to investigate the proper valuation of marital property, and to discover Mr. Younger's hidden accounts and property purchased during their marriage.

A scheduling conference before a family master was set for October 9, 2002, but after Mr. Younger requested and obtained a continuance, the conference was rescheduled for November 13, 2002. On that date the Youngers appeared for the scheduling conference at which time the master scheduled a merits hearing on April 23-24 to decide issues of divorce, property, alimony, and pensions.

On Februray 26, 2003, Ms. Younger filed a motion to compel discovery. In that motion, Ms. Younger asked the court to award her $20,000 for interim costs and legal fees to assist in the discovery process. On March 6, Mr. Younger filed a motion for a protective order. On that same date, he also filed an opposition to Ms. Younger's motion to compel, and he noted that his discovery requests remained unanswered. He cited Maryland Rule 2-432(a) as permitting sanctions because Ms. Younger violated discovery requirements.

On March 11, 2003, the court conducted a telephone conference to hear arguments on the discovery issues. The court ordered Mr. Younger to: appear for a deposition on or before April 15, 2003; supplement Ms. Younger's interrogatories; and provide documents no later than March 24, 2003. The court ordered Ms. Younger to provide answers and responses to Mr. Younger no later than March 24, 2003. During the telephone conference, the court denied Ms. Younger's request for a hearing on suit money, and instructed her to file a separate motion after the court issued its discovery order.

A settlement conference on March 12 did not resolve their disputes, and so the court set the case for trial on the remaining issue of contested property. On March 18, Ms. Younger filed a motion to alter or amend the March 11 court order because the order did not mention the court's request to Ms. Younger that she file a separate motion for suit money, or her request to continue the trial.

Mr. Younger's deposition was set for April 14. Ms. Younger then filed a motion to alter or amend the court's settlement conference order, and said that the following issues would be contested at trial: permanent alimony; equitable distribtuion of Mr. Younger's pensions from the Metropolitan Police Department and the U.S. Army; a monetary award for all real property titled in Mr. Younger's, or a third party's

name; a monetary award for investments, IRA and similar accounts titled in Mr. Younger's, or a third party's, name; a portion of the proceeds for rental property managed by Mr. Younger; a portion of savings, checking, money market, and passport accounts under Mr. Younger's control; and a portion of the business income where Mr. Younger has an equitable interest.

Mr. Younger was deposed by video conference on April 14. On April 21, Ms. Younger received the deposition transcript. On April 22, Ms. Younger filed a motion for continuance and a supplemental request to modify the *pendente lite* alimony award to include reasonable and necessary expenses. She asserted that Mr. Younger dissipated their martial estate intentionally when he sold real property for its tax assessed value rather than fair market value, that Mr. Younger's deposition testimony raised more questions about the value of this property, and that she needed more time to investigate.

On April 23, 2003, the eve of trial, the court conducted a hearing and denied Ms. Younger's motion for continuance. The court held that Ms. Younger had not demonstrated good cause. Ms. Younger then requested a stay, and informed the court that she would file an interlocutory appeal pursuant to § 12-303 of the Courts & Judicial Proceedings Article. The court declined to stay the merits hearing, which led Ms. Younger to state that she was not able to proceed with trial that day and that "the Court can rule and then we can head to Annapolis . . . and that is our position . . . today, thank you." Ms. Younger stated that she would not cross-examine any witnesses, which led the court to advise her that he would be able to rule only on what Mr. Younger presented at trial. The court warned Ms. Younger: "So you're going to risk all this property because you insist there's other property out there?"

THE COURT: Do you understand what's going on today?

[MS. YOUNGER]: Yes I do sir.

THE COURT: Okay. And you also agree with your attorney's position that you're not going to present any evidence?

[MS. YOUNGER]: That's courrect. I agree with [counsel].

THE COURT: All right.

[MR. YOUNGER'S COUNSEL]:

Your honor, I make a motion to dismiss the supplemental complaint for absolute divorce, with prejudice.

THE COURT: Well, it will be dismissed for failure to present any evidence. So we will move to the counter-complaint for a divorce. Mr. [Younger] call your first witness.

The court then proceeded with the merits hearing.

On May 8, the court granted an absolute divorce to Mr. Younger. The court denied Ms. Younger's supplemental complaint for absolute divorce, and her complaint for support and maintenance because she did not present any evidence at trial. The court valued the marital estate, and granted Ms. Younger $23,000. The court terminated *pendente lite* support, and denied requests from both Mr. and Ms. Younger for attorney's fees. The court also denied Ms. Younger's motion for a new trial, or in the alternative, to alter or amend the judgement. This appeal followed.

DISCUSSION

I.

Ms. Younger first asserts that the court erred when it conducted the merits hearing because "absent suit money she could not effectively protect her interests in property." She argues that the lower court's "refusal to award her reasonble and necessary expenses violated the due process clause of the 14th Amendment" because she did not have a chance to ascertain the real value of the disputed property. She equates suit money with alimony, and relies upon Rule 12-303(v) to assert that denying a request for "suit money is thus identical to denying a request for alimony." She claims that the court needed a Joint Marital Property Statement prior to the merits hearing. She received Mr. Younger's proposed property statement on April 21, two days before the trial. They did not submit a joint statement to the court.

Maryland Rule 2-508(b) provides that "[w]hen an action has been assigned a trial date, the trial shall not be continued on the ground that discovery has not yet been completed, except for good cause shown." It is within the sound discretion of the trial cour whether to grant or deny a request for a continuance. *See Zdravkovich v. Siegert*, 151 Md. App. 295, 303 (2003), *cert. denied*, 377 Md. 114 (2003). The court's "response to a request for a continuance will not be reviewed on appeal unless the court acts arbitrarily." *Id.*

In the case *sub judice*, Ms. Younger waited until the eve of the trial to file a motion for a continuance, and a motion for suit money. The court noted that discovery was not diligently pursued, the case was not diligently prepared, and that there were not sufficient grounds for a continuance. The above clearly shows that the trial court did not abuse its discretion when it denied Ms. Younger's requests for a continuance and suit money.

II.

Next, Ms. Younger argues that Section 12-303 of the Courts & Judicial Proceedings Article allowed the court to grant her a stay in proceedings pending an interlocutory appeal. Maryland Code provides:

> A party may appeal from any of the following interlocutory orders entered by a circuit court in a civil case:
>
> * * *
>
> (3) An order:
>
> (v) For the sale, conveyance, or delivery of real or personal property or the payment of money, or the refusal to rescind or discharge such an order, unless the delivery or payment is directed to be made to a receiver appointed by the court.

Md. Cote (1973, 2002 Repl. Vol.), Cts. & Jud. Proc. Art. § 12-303 (3) (v).

Maryland courts have clearly stated that only interlocutory orders included in Rule 12-303 are appealable. *See Cant v. Bartlett*, 292 Md. 611, 615 (1982); *see also NRT Mid. Atlantic, Inc. v. Innovative Properties, Inc.*, 144 Md. App. 263, 274 (2002). In *Barnes v. Lednum*, 197 Md. 398, 405 (1951), the Court of Appeals wrote: "If every order granting or denying discovery is a final appealable order, it would seem that every ruling on evidence would be separtely appealable." *See also Smiley v. Atkinson*, 12 Md. App. 543, 549 (1971) (finding no support for the "contention that . . . interlocutory orders relating to discovery and continuances are immediately appealable). Here, Ms. Younger is appealing from an order to deny her stay of proceedings in a case which ultimately did result in the "sale, conveyance, or delivery of . . . property." But simply because the trial ultimately resulted

in "sale, conveyance, or delivery of property" does not mean that a ruling prior to trial entitles her to take an interlocutory appeal applying to discovery. Rule 12-303 does not provide for a stay during such an appeal. We find that the court did not abuse its discretion in denying her request for a stay of proceedings.

III.

Finally, Ms. Younger asserts that the court erred in granting Mr. Younger an absolute divorce, and in denying her ongoing financial support, and in making a final distribution of marital property. We disagree.

Ms. Younger made a strategic decision not to present evidence at trial. The court warned her that if she did not present evidence, that the court would be able to consider only evidence presented by Mr. Younger. Ms. Younger said she understood the risk. The court had no alternative but to rule solely on the evidence that Mr. Younger presented at trial. Accordingly, we affirm the rulings of the Circuit Court for Prince George's County.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED;

APPELLANT TO PAY COSTS

FRANCES YOUNGER	*	IN THE
	*	
Appellant,	*	COURT OF SPECIAL
	*	APPEALS
v.	*	STATE OF MARYLAND
	*	
COLLIN L. YOUNGER SR.	*	APPEAL NO. 00653 September Term, 2003
Appellee	*	

****

MOTION FOR CORRECTION OF RECORD[1]

COMES NOW, Appellant FRANCES YOUNGER, by and through undersigned counsel, Sharon R. Herron and the Law Offices of Johnny M. Riddick & Associates, and herein respectfully moves the Court for an Order correcting the Record in the instant appeal and as reasons says:

1. The Record submitted to the Court from the Circuit Court for Prince George's County Maryland requires correction.

2. Specifically, the Marital Property Statement submitted by the Appellee, has a court date of April 10, 2003 (See E.3). This is incorrect.

3. Appellee's proposed Marital Property Statement was not filed on April 10, 2003, but was first filed in open court on April 23, 2003.

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[1] Appellant seeks to preserve the allegations contained herein for discussion in her Reply Brief and further appellate litigation if it becomes necessary.

4. While the Record is presumed correct, Appellant respectfully submits that a brief examination of certain facts clearly illustrates the need for correction of the record.

5. First, the proposed Joint Marital Property Statement filed by Appellee does not have the **actual time** the proposed Joint Marital Property Statement was received (emphasis added).

6. Secondly, Appellee's proposed Marital Property Statement, and likewise Appellee's Motion for Protective Order, a filing below which also bears a court date stamp of April 10, 2003, but was not filed on that date, **do not appear in chronological order in the record.**

7. The record reflects that while both documents reflect a docketing date of April 10, 2003, both appear in the appellate record as having been filed after Appellant filed (below) her Motion for Continuance of Trial and Supplemental Request for Modification of Pendente Lite Alimony, which was filed April 22, 2003.[2]

8. Further, Appellee's date of service of the proposed Marital Property Statement on Appellant further illustrates that it was not filed on April 10, 2003, but rather in open court. Appellant received service of the Appellee's proposed Marital Property Statement on April 21, 2003, two (2) days

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[2] In fact, Appellee's document was actually captioned "Joint Statement of Parties Concerning Marital and Non-Marital Property". Notably, the Trial Judge apparently *changed* the caption to read, "Defendant's Statement Concerning Marital and Non-Marital Property". (E.155). It would thus appear that this document was filed in, as alleged by Appellant, in open court. The document was then modified by the Trial Judge, and then docketed. Notably, the docket entries exactly mirror the title of the documents filed.

before the hearing, but 11 days after the purported file date (Exhibit One—Appellant's facsimile copy of proposed marital property statement. See also (E.187).

9. Notably, Appellee's proposed Marital Property Statement, received via facsimile **at undersigned counsel's office on April 21, 2003, does not contain any court date-stamp whatsoever (emphasis added).**

10. As further evidence of the date that undersigned counsel received Appellee's proposed Marital Property Statement,[1] the transcript of the hearing which occurred on April 23, 2003, which reveal the following exchange regarding the proposed marital property statement:

MR. EASON: Your Honor, **I'm going to at this juncture submit the joint statement**. I had the courtesy to fax this, because remember I have to generate it, even—well, I'm the defendant, but I generated it. And I asked Ms. Younger's counsel to put her input in it. And—may I approach? (E.228-tr. lines 19-24).

THE COURT: Uh-huh. (E. 228 Tr. lines 25).

MR. EASON: And she refused. She wouldn't sign it. And I have a letter to that effect. (E. 229 Tr. lines 1-2).

Now, as you know Judge, just a preliminary matter, the rules concerning the joint statement indicate that—if the Court would, I would ask that the court now accept my statement as the joint statement. (E. 229 Tr. lines 1-7).

THE COURT: Well, here's what we're going to do. There's a counterclaim: You're saying that you don't want to go forward. (E. 229. Tr. lines 8-10).

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[1] Appellant refers the Court to the relevant portions of the Transcript and other pleadings and Court filings appear in proper chronological order in the Record with the exception of these two pleadings.

MS. HERRON: Excuse me, Your Honor. I'm saying that pursuant to Maryland Rule 12-303, we will be seeking an interlocutory appeal at this juncture. The marital estate has not been ascertained. It's a Fifth Amendment violation— (E. 229 Tr. lines 229 lines 11-15).

11. Based upon the foregoing, Appellant submits to the Court that Appellee's counsel's own statement, and other facts set forth herein indicate that his proposed Joint Marital Property Statement was filed in open court on **April 23, 2003**.

12. If the proposed marital property statement had been served by April 10, 2003, as Appellee now incorrectly alleges, there would have been no need to submit it in **open court the day of the hearing. Further, no where in the transcript does opposing counsel suggest that undersigned counsel was served via mail. He explicitly acknowledges that service occurred via facsimile (E. 219, emphasis added)**.

13. As further evidence that the proposed marital property statement was filed in open court the following exchange between counsel for Appellee and the Court took place:

MR. EASON:. . . I faxed over— there's a list of all the property. You know you require a joint statement. Ms. Younger refuses to sign it. I have another motion after we **hopefully deny the motion for a continuance (E. 219 tr. lines 5-8, emphasis added)**.

14. Based upon the foregoing, Appellant submits that the docket entry date for the Appellee's proposed Marital Property Statement should be April 23, 2003, although undersigned counsel is willing to stipulate that the proposed joint Marital Property statement arrived in her office on April 21, 2003.

15. Appellee's Motion for Protective Order and Expedited Relief was likewise not filed on April 10, 2003.

The following exchange regarding the deposition took place:

MR. EASON: . . . I filed a motion for a protective order (E. 218 tr. lines 1-2).

I said, "look," you know, "you've got to abide by the rules"(E. 218 tr. lines 3-4).

And I was supposed to be in Towson, according to the notice of deposition, and that was clearly not in conformance with the Maryland Rules, that I would have to travel to Baltimore County to be able to adequately provide an effective assistance of counsel to my client, who was in San Antonio. (E. 218 tr. lines 5-9).

Now using your good judgement, you took off that **Friday**, because the motion got shipped off to Judge Krauser. And that file has been sitting in Judge's Krauser's chambers (E. 218 tr. lines 11-14, emphasis added).

And basically Judge Krauser said, "'Paul, deal with it please." And there's no entry you know, "deal with it." (E. 218 tr. lines 15-17).

16. Appellant submits to the Court that undersigned counsel did not receive a copy of the Protective Order via mail, but by facsimile on Friday **April 11, 2003** (Exhibit Two facsimile copy).

17. Undersigned counsel further submits that at no time did she have a conversation with either opposing counsel, or Judge Krauser regarding the Motion for Protective Order, as she was out of the office observing Good Friday.

18. Undersigned counsel's secretary informed her that Judge Krauser's office had called to speak with her, and when informed that I was out of the office, she (Judge Krauser) informed opposing counsel to contact me regarding his filing.

19. Undersigned counsel submits that the Record should reflect that the Appellee's Motion for Protective Order should be corrected and docketed as having been received by her office on April 11, 2003.

20. On or about May 5, 2003, Pursuant to Maryland Rule 2-533 [Motion for a New Trial] and Maryland Rule 2-534 [Motion to Alter or Amend a Judgment] Appellant requested that the Trial Court submit written findings in preparation for Appellant's appeal. The Trial Court refused. Notably, the issue of Appellee's file date regarding his proposed Marital Property Statement was raised below.

21. Appellant specifically argued to the Trial Court that it was constitutional error to rely upon the proposed Joint Marital Property Statement submitted by the Appellee, given that his proposed Marital Property Statement was submitted to undersigned counsel two (2) days prior to the commencement of the trial, and the trial court knew that the Appellee had dissipated substantial assets in the marital estate (E. 172. Footnote 4) (See Also E. 184-187).

22. Based upon the aforegoing undersigned counsel respectfully requests that this Court issue an Order directing that the docket entries be corrected to reflect:

1. That the docket entry date for the Defendant's Motion for Protective Order be corrected to **April 11, 2003**;

2. That the docket entry date for the Defendant's proposed joint Marital Property Statement be corrected to **April 21, 2003**;

3. And for such other relief as the nature of her cause may require

Respectfully Submitted,

Sharon R. Herron
The Law Offices of
Johnny M. Riddick & Associates
505 Capitol Court N.E.
Suite 100
Washington, D.C. 20002
(202) 371-1933
Attorney for Plaintiff

ATTORNEY CERTIFICATION IN LIEU OF AFFIDAVIT

I do hereby certify that the aforegoing is true to the best of my knowledge, information, and belief.

/s/ Sharon R. Herron

Sharon R. Herron

FRANCES YOUNGER	*	IN THE
	*	
Appellant,	*	COURT OF SPECIAL
	*	APPEALS
v.	*	STATE OF MARYLAND
	*	
COLLIN L. YOUNGER, SR.	*	APPEAL NO. 00653
	*	September Term, 2003
Appellee.	*	

****

POINTS AND AUTHORITIES

1. Maryland Rule Civil, 8-431.
2. Maryland Rule Civil, 8-414.
3. The Record herein.
4. The discretion of the Court.
5. Vernon v. State, 12 Md. App. 157, 277 A.2d. 635 (1971).

/s/ Sharon R. Herron

Sharon R. Herron

CERTIFICATE OF SERVICE

I do hereby certify that a copy of the aforegoing Motion for Correction of Record was served on this 5th day of April, 2004, to Paul Bauer Eason, Law Office of Paul Bauer Eason, Attorney at Law, Hanover Office Park, 7327-D Hanover Parkway, Greenbelt, Maryland 20770.

/s/ Sharon R. Herron

Sharon R. Herron

FRANCES YOUNGER	*	IN THE
	*	
Appellant,	*	COURT OF SPECIAL
	*	APPEALS
v.	*	STATE OF MARYLAND
	*	
COLLIN L. YOUNGER, SR.	*	APPEAL NO. 00653 September Term, 2003
Appellee.	*	

ORDER

Upon Consideration of the Appellant's Motion for Correction of the Record and the Opposition thereto, it is on this _____ day of _____, 2004 hereby

ORDERED, that the Defendant's Proposed Marital Property Statement be corrected to a docket entry date of April 21, 2003, and it is further;

ORDERED, that the Defendant's Motion for a Protective Order and Expedited Relief be corrected to a docket entry date of April 11, 2003.

SO ORDERED.

_____

J U D G E

Copies to:

Sharon R. Herron
Law Offices of Johnny
M. Riddick & Associates
505 Capitol Court NE
Suite 100
Washington, DC 20002
(202) 371-1933
Attorney for Appellant

Paul Bauer Eason
Law Office of
Paul Bauer Eason
Attorney at Law
Hanover Office Park
7327-D Hanover Parkway
Greenbelt, Maryland 20770
(301) 220-0700
Attorney for Appellee

IN THE CIRCUIT COURT OF MARYLAND FOR PRINCE GEORGE'S COUNTY

FRANCES YOUNGER

Plaintiff,

vs.

Case No. CAD01-29187

COLLIN YOUNGER, SR.

Defendant.

FILED
APR 10 2003
CLERK OF THE CIRCUIT COURT
PRINCE GEORGE'S COUNTY, MD.

Darlene

~~JOINT~~ STATEMENT ~~OF~~ ~~ES~~ CONCERNING
MARITAL AND NON-MARITAL PROPERTY

1. The parties agree that the following property is "marital property" as defined by Code, Family Law Article, Section 8-201:

Description of Property	How Titled	Fair Market Value	Liens, Debt, or Encumbrances Directly Attributable
1108 Ruatan St. Silver Spring, MD	Joint	$112,000.00	None
DC Metropolitan Police Federal Credit Union	H	$4,139.50	None
Citizen's Bank of Maryland (Suntrust)	H	$1,448.00	None

2. The parties agree that the following property is not marital property because the property (a) was acquired by one party before marriage, (b) was acquired by one party by inheritance or gift from a third person, (c) has been excluded by valid agreement, or (d) is directly traceable to any of the these sources:

Description of Property	Reason Why Non-marital	How Titled	Fair Market Value	Liens, Debt, or Encumbrances Directly Attributable
VA Disability	Service related Injuries	H	Present day value Unknown	None
Frank Templeton Investments		H	$57,552.22	None
Security First Group Met Life		H	$10,904.42	None

128) 4:

269

PAUL BAUER EASON
ATTORNEY AT LAW
HANOVER OFFICE PARK
7227-D HANOVER PARKWAY
GREENBELT, MARYLAND 20770
(301) 220-0750
(FAX) 220-3317

Putman Hartford
Capital Manager

3. The parties are not in agre
marital or non-marital:

Description of Property	How Titled
Suntrust - Cert.of Deposit/IRA	H
USAA IRA	H
USAA - Checking Acct.	H
SunTrust SunTrust Securities	H
USAA - S&P 500 Index Fund	H
GE Life and Annuity Assurance Company	H
AXA Financial - Common Stock	H
14227 Jib Street, Apt. 11	H and daug
U.S. Army Retirement	H
DC Metropolitan Police Department Retirement	H
ING DC Deferred Comp	H
USAA 401k	H
CSRP (Wife's Retirement)	W

PAUL BAUER EASON
ATTORNEY AT LAW
HANOVER OFFICE PARK
7237-D HANOVER PARKWAY
GREENBELT, MARYLAND 20770
(301) 220-0350
(FAX) 220-3317

H	$39,996.88	None

ment as to whether the following property is

	Fair Market Value	Liens, Debt, or Encumbrances Directly Attributable
	$3,393.61	None
	$1,388.69	None
	$198.00	None
	$48,161.14	None
	$18,549.95	None
	$17,167.77	None
	$132.37	None
er	$89,000.00	$79,130.59
	Present day value unknown	None
	Present day value unknown	None
	$78,578.00	None
	$7,632.00	None
	Present day value Unknown	None

1994 BMW H

SHARON HERRON, ESQ
Attorney for Plaintiff
505 Capital Court, Suite 100
Washington, DC 20002

C:\Cases\Domestic\Younger,C\Joint Statement.do

PAUL, BAUER EASON
ATTORNEY AT LAW
HANOVER OFFICE PARK
GREENBELT, MARYLAND

57

$1,0000.00 None

PAUL BAUER EASON, ESQ
Attorney for Defendant
P.G.I.D.: EA0015
7327-D Hanover Parkway
Greenbelt, Maryland 20770
(301) 220-0700

130

IN THE CIRCUIT COURT OF MARYLAND FOR PRINCE GEORGE'S COUNTY

FRANCES YOUNGER	*	
	*	
Plaintiff/	*	
Counter Defendant,	*	
	*	
v.	*	Case No.: **CAD01-29187**
	*	
COLLIN L. YOUNGER SR.	*	
	*	
Defendant/	*	
Counter Plaintiff.	*	

JUDGMENT OF ABSOLUTE DIVORCE

This cause having come on for trial before the Honorable Sean D. Wallace on April 23, 2003, on the matter of the Plaintiff/Counter Defendant's (hereinafter "Plaintiff") Supplemental Complaint for Absolute Divorce and the Defendant/Counter Plaintiff's (hereinafter "Defendant") Counter-Complaint for Absolute Divorce, testimony having been taken and evidence adduced, accordingly, it is thereupon this 8th day of May, 2003, by the Circuit Court of Maryland for Prince George's County, hereby,

ORDERED, that the Plaintiff's Motion for Continuance of Trial and Supplemental Request for Modification of Pendente Lite Alimony Award to Include Reasonable and Necessary Expenses, be and hereby is denied; and it is further,

ORDERED, that the Plaintiff's request for a stay of proceedings pursuant to Maryland Rule 12-303, be and hereby is denied; and it is further,

ORDERED, that the Defendant, **COLLIN YOUNGER, SR.**, be and hereby is granted an Absolute Divorce from the Plaintiff, **FRANCES YOUNGER**; and it is further,

ORDERED, that the Plaintiff's Supplemental Complaint for Absolute Divorce be and hereby is dismissed for failure to prevent any evidence; and it is further,

ORDERED, that the Plaintiff's Complaint for Support and Maintenance be and hereby is dismissed for failure to present any evidence; and it is further,

ORDERED, that the property located at 1108 Ruatan Street, Silver Spring, Maryland, titled in the joint names of the parties, is declared to be marital property and is to be placed on the market for sale within ninety (90) days, and that upon sale and settlement, and after subtracting the usual and customary costs of sale, that the net proceeds be divided equally between the parties, and it is further,

ORDERED, that the below listed assets titled in the sole and separate name of the Defendant, Collin Younger, and listed under Paragraph Two (2) of the Defendant's Statement Concerning Marital and Non-Marital Property, are declared to be the Defendant's non-marital property:

a. VA Disability

b. Frank Templeton Investments

c. Security First Group, Met Life

d. Putman Hartford, Capital Manager; and it is further,

ORDERED, that both the Plaintiff and the Defendant are awarded a one-third interest in the marital portion of the respective pensions of the other (i.e. the Husband's Metropolitan Police Department and United States Army pensions and the Wife's Civil Service Retirement), pursuant to the provisions of the *Bangs Formula*

Years and months of service credited
towards retirement during marriage

Former spouse's share=33% X _____

Total years and months of service credited towards retirement

and that the Husband is solely responsible for preparing, at his expense, the appropriate QDROs so as to ensure the parties' interests in the respective pension of the other; and it is further,

ORDERED, that considering all of the factors outlined in Family Law Article 8-205, and as an adjustment of the equities and rights of the parties concerning marital property, the Plaintiff/Wife Frances Younger be and hereby is granted a monetary award in the amount of $23,000.00; and its is further,

ORDERED, that both parties' requests for attorneys fees be and hereby are denied; and it is further,

ORDERED, that all *pendente lite* relief, to include the Defendant's obligation to pay $1,000.00 per month as temporary alimony to the Plaintiff, be and hereby is terminated, effective April 23, 2003

ORDERED, that this case shall be closed for statistical purposes only.

APPROVED AS TO FORM AND CONTENT

/s/ PAUL BAUER EASON

PAUL BAUER EASON, ESQ.
Attorney for the Defendant

/s/ SEAN D. WALLACE

SEAN D. WALLACE
Judge

FRANCES YOUNGER	*	IN THE
	*	
Plaintiff,	*	CIRCUIT COURT
	*	
v.	*	FOR
	*	
COLLIN L. YOUNGER SR.	*	PRINCE GEORGE'S COUNTY
Defendant	*	
	*	Case No. CAD01-29187

****

MOTION FOR CONTINUANCE OF TRIAL AND SUPPLEMENTAL REQUEST FOR MODIFICATION OF PENDENTE LITE ALIMONY AWARD TO INCLUDE REASONABLE AND NECESSARY EXPENSES

TO THE HONORABLE THE JUDGES OF SAID COURT:

COMES NOW Plaintiff, FRANCES YOUNGER by and through her attorneys, Sharon R. Herron and the Law Offices of Johnny M. Riddick & Associates, and respectfully requests a continuance of the trial in this matter, presently scheduled for April 23-24, 2003. Plaintiff submits to the Court that the Defendant has intentionally dissipated a large portion of the marital estate by selling real property titled solely in his name that was acquired during the parties marriage of nearly forty two years (42) in duration, for their tax assessed value, which is far less than market value, requiring Plaintiff to now hire experts to ascertain the market value of those dissipated properties.

Plaintiff further submits to the court that after the Court's Order of March 11, 2003, the Defendant **still** refuses to fully

respond to discovery requests, and to release other critical financial documents, specifically rental income receipts, documents evidencing his interest in off-shore real property interests, and real property situate in other jurisdictions. The Defendant's refusal to produce the necessary discovery and other dilatory tactics he has utilized, has resulted in Plaintiff's inability to ascertain the total value of the marital estate, such that an equitable distribution of the marital assets can be determined by the Court. Further, the refusal of the Defendant to produce the necessary financial documents now requires Plaintiff to incur additional expenses to acquire copies of the documents from other sources. This will be a very expensive process.

Accordingly, Plaintiff respectfully renews her request that the court award her reasonable and necessary expenses in the amount of twenty thousand dollars **($20,000.00)** to be paid by the Defendant.

Respectfully Submitted,

/s/ Sharon R. Herron

Sharon R. Herron
The Law Offices of
Johnny M. Riddick & Associates
505 Capitol Court N.E.
Suite 100
Washington, D.C. 20002
(202) 371-1933
Attorney for Plaintiff

FRANCES YOUNGER	*	IN THE
	*	
Plaintiff,	*	CIRCUIT COURT
	*	
v.	*	FOR
	*	
COLLIN L. YOUNGER SR.	*	PRINCE GEORGE'S COUNTY
Defendant	*	
	*	Case No. CAD01-29187

****

MEMORANDUM OF POINTS AND AUTHORITIES

I. Factual and Procedural Posture of the Case

The instant case is a divorce action. On October 10, 1961, the parties were married in a religious ceremony in Oahi, HI. Plaintiff, Frances Younger, born December 24, 1938, was 23 years of age at the time the parties were married. Defendant, Collin Younger Sr., born November 1, 1940, was 21 years of age at the time of the marriage. The marriage is of long duration, 41 years and six (6) months as of the filing of the instant motion. Two children were born of the marriage, namely, Annette Gray, born December 31, 1964, currently 39 years of age, and Collin Younger Jr., born July 1, 1967, currently 35 years of age. Both children are over the legal age of 18, are not disabled, and are therefore emancipated.

The instant litigation commenced on December 19, 2001, with Plaintiff filing a Complaint for Support and Maintenance. In her supporting Affidavit Plaintiff testified that the parties had separated on or about May 1990. She further testified that the Defendant would not agree to a divorce at that time because it would harm his career in the

military and with the District of Columbia Police Department. The parties therefore agreed that the Defendant would maintain the marital home and the Plaintiff's necessaries. Plaintiff further testified that the Defendant did honor his agreement and maintained the upkeep of the marital home and the Plaintiff's necessaries from May of 1990, through July, 1997. However, in July of 1997, Defendant informed Plaintiff that he would no longer provide for her.

Plaintiff had retired in 1994, due to health reasons. Her monthly pension of approximately six hundred sixty three dollars ($663.00) was insufficient to allow her to maintain the family home. The parties adult daughter Annette Gray, along with her family moved into the marital home in order to financially assist Plaintiff. Sometime later Ms. Gray and her husband purchased a home, and because the Plaintiff could not afford the upkeep of the marital home without the assistance of the Defendant she moved in with them to their new residence.

In response to Plaintiff's Petition for Support and Maintenance, Defendant Collin Younger Sr. filed a Counterclaim for Absolute Divorce on June 15, 2002. Notably, Defendant's own financial statement places his monthly income at eleven thousand two hundred nine dollars and fifty cents **($11,209.50)**.

At a pendente lite alimony hearing which occurred on June 26, 2002, Plaintiff testified that she must relocate into her own home due to the fact that Mr. Gray's (her son-in-law) son from a previous marriage is becoming rebellious, and will be coming to live with his father. The minor child will occupy the basement apartment where the Plaintiff currently resides. As of the date of this filing, Plaintiff is attempting to move into an apartment that she can afford on her meager pension, Social Security, and pendente lite alimony, which is currently

one thousand dollars ($1,000.00) monthly, so that the minor child in question can reside with his father.

Sensing that the financial distress that the Plaintiff was experiencing could lead to a strategic advantage in divorce proceedings between the parties, Defendant Collin Younger Sr. began to implement his defense, undersigned counsel analogizes to "the Shell Game". First, he made it difficult to find him, and (2) he has made it difficult to find the total marital estate. Plaintiff attempted to initiate divorce proceedings against the Defendant as early as 1999. When Plaintiff attempted to serve Defendant with a Summons and Complaint for an Absolute Divorce which had been filed in the Circuit Court for Anne Arundel County, Maryland, Defendant submitted an Affidavit and accompanying correspondence from his current mistress, a woman who has been identified as Miss Teresita Beverage, stating that he had been out of the area attending a private function at Miss Beverage's then New Jersey residence. (See Exhibit One, Plaintiff's Opposition to Defendant Collin Younger, Sr.'s Request for a Protective Order and Motion to Enlarge the time for Discovery).

The Defendant has also made communicating with the Plaintiff difficult. For example, since he left the marital home due to his involvement with Miss Beverage, the Defendant for years refused to provide the Plaintiff with a current telephone number, making it impracticable for Plaintiff to attempt to communicate with him. Defendant only provided Plaintiff with a telephone number after he was served with the instant action. Additionally, some of the addresses Defendant provided to the Plaintiff include:

(a) 14239 Jib Street, apartment #22, Laurel, Maryland 20707;

(b) P.O. Box 90268, Washington, D.C. 29909;

(c) 19435 Mill Oak, San Antonio, Texas 78258;

(d) 12235 Vance Jackson Road, San Antonio, TX 78230;

(e) 515 Montgomery Street #4, Laurel, Maryland 20707;

(f) 4710 Auth Pl. #720, Suitland, Maryland 20746-4229.

Plaintiff opines that Defendant continually provided Plaintiff with different addresses in order to make serving him with a complaint for absolute divorce difficult. The "disappearing act" of the Defendant did not end until the Defendant was served with a copy of Plaintiff's Complaint for Support and Maintenance with the assistance of the San Antonio Texas Sheriff's Department at 9919 Colonial Square, #1017, an address he **had not** given the Plaintiff (See Exhibit Two).

Plaintiff is now faced with the prospect of discovering all the assets which comprise the marital estate. Defendant has dissipated at a minimum, real property marital assets, by sale during the pendency of the litigation, for less than fair market value. In response, Plaintiff must now ascertain 1) the fair market value of those assets that the Defendant has already dissipated 2) discovering where he has hidden other marital assets.

ARGUMENT

II The Defendant has dissipated marital assets with the selling of real property situate in Maryland and the District of Columbia

On March 12, 2003, the Court in response to Plaintiff's Motion to Compel and the Defendant's Opposition thereto, ordered the parties to turn over all discovery requests made to one another by March 24, 2003. On that day, Defendant

revealed to the Plaintiff for the first time that he had sold the parties' apartment complex situate at 1322 Downing Place NE, Washington, DC on October 31, 2002, for one hundred twenty eight thousand dollars ($128,000).[1] Notably, Defendant admits in his synopsis of the sale that the purchase price was estimated from an extrapolation of the "tax assessed value" of the property (See Exhibit Three, Defendant's Description of the Sale), and not a fair market appraisal.

This presents a problem. It is well settled law in Maryland that the *fair market* value of real property may not be ascertained through the use of tax assessments. Gravenstine v. Gravenstine 58, Md. App. 158, 472 A.2d. 1001 (1984).

The Defendant has also sold real property situate at 14239 Jib St., Laurel Maryland for less than its purchase price (See Exhibit Three). Notably, once again Defendant failed to provide to Plaintiff a copy of an appraisal. Plaintiff submits to the Court that given that both real property transactions were done without her knowledge and consent, she is entitled to and is requesting that the Court treat the real property as "extant property," and will be seeking to ascertain the fair market value of both properties prior to their sale. The law in this jurisdiction gives her this right. Rock v. Rock 86 Md. App. 598, 587 A.2d. 1133 (1991). As the Defendant is only revealing these transactions to the Plaintiff, on the eve of trial, Plaintiff seeks a continuance in order to ascertain the fair market value of the sold properties.

---

[1] Undersigned counsel has retained a real estate appraisal firm, to assist in the valuation of the realty sold. While a complete appraisal has not been performed, undersigned counsel was advised that the appraisal of realty, in the District of Columbia, for its "tax assessed value", is faulty. Just based upon the value of land in the District of Columbia, it is unlikely that a four unit apartment complex would have a fair market value equivalent to its tax assessed value.

III. The Defendant continues to engage in dilatory discovery tactics in an effort to prejudice the Plaintiff's ability to discover all marital assets

In pertinent part, Maryland Rule 2-432(b) provides that a party may move for an order compelling a litigant to provide requested discovery upon adequate notice to the opposing party. Additionally, the court has held that dismissal is a proper remedy when there has been more than a three (3) month delay in responding to requested discovery. Wareheime v. Dell, 124 Md. App. 31, 720 A. 2d. 1196 (1998). In the instant case, Plaintiff submits that the Defendant's refusal to participate in the discovery process is conduct worthy of the sanction of dismissal. However, the dismissal of the instant action would do little to improve the impoverished condition of the Plaintiff due to the financial abandonment of the Defendant. Based upon the length of the marriage, and to a lesser extent the length of the separation, Plaintiff seeks an equitable distribution of all marital assets, and the return to the lifestyle she enjoyed during the course of the marriage. Rosenberg v. Rosenberg, 64 Md. App. 487, 497 A.2d 485 (1985). Plaintiff is therefore not seeking the sanction of dismissal of the instant action, but rather a trial on the merits. At a minimum, however, Defendant's failure to fully respond to discovery requests[2] alone, is sufficient to warrant a continuance, and in this instance, also further supports Plaintiff's request for suit money.

---

[2] For example, the Defendant refused to turn over all of his income tax filings, documents relating to rental income proceeds, bank statements for all accounts, leases, a current address and telephone number of his mistress (with whom he has been engaged in business transactions), 401(k) statements for his current employer, documents showing his interest in real real property outside Maryland and the District of Columbia, and other items of requested discovery. (See Exhibit Four, Deposition of Collin Younger, Sr.).

Plaintiff submits to the Court that during the course of the marriage, Defendant Collin Younger Sr. handled the finances for the couple, including the management of all rental property and the collection of rents. Despite Plaintiff's requests that the Defendant turn over to undersigned counsel an accounting of all rental income, the Defendant flatly refuses to do so. Plaintiff has also requested that the Defendant release to her documents which account for all investment income. Once again, the Defendant has refused to do so.

Without the Defendant's cooperation in the discovery process, Plaintiff is forced to hire several experts, and to conduct numerous depositions in order to ascertain the fair market value of the marital estate. To do so, Plaintiff requires suit money in the amount of twenty thousand dollars **($20,000.00)** for costs and legal fees.

Plaintiff further submits to this Court that suit money is required in order to ascertain what marital assets may now be titled in the name of the Defendant's mistress, a Miss Teresita Beverage. Upon information and belief, the Defendant began an adulterous relationship with Ms. Beverage in 1989, and is currently maintaining an open and notorious adulterous relationship with her in San Antonio, Texas, where the couple resides with Ms. Beverage's daughter. Upon information and belief, Plaintiff submits to the Court that the Defendant financially abandoned the upkeep of the marital home in order to provide for his "new family."

Based upon the Defendant's conduct of openly and notoriously providing for his mistress and her daughter, Plaintiff next submits to the Court that it is now proper for the Court to award suit money in order to discover the extent of dissipation of any marital asset expended for the upkeep of Ms. Beverage and her daughter, and to also ascertain what marital assets remain.

IV. Plaintiff is entitled to reasonable and necessary expenses associated with the Court's equitable determination of marital property

Pursuant to Ann. Code. MD. Section 8-214, this Court may award to a party the reasonable and necessary expenses associated with the bringing and prosecution of a divorce action. Reasonable and necessary expenses are defined as:

(1) suit money;

(2) counsel fees; and

(3) costs.

In the instant case, Defendant has always maintained the financial assets of the family. Additionally, Defendant is engaging in an open an adulterous relationship whereby he is expending marital assets for himself, his mistress, and her daughter. By refusing to participate in the discovery process, the Defendant is purposefully forcing Plaintiff to incur unnecessary costs and legal expenses in order to prosecute the instant divorce action. Without the release of the critical information from the Defendant, Plaintiff submits that it is proper for the Court to award her costs in order to ascertain the true value of the remaining marital estate.

Plaintiff further submits to this Court that Defendant is financially able to pay the costs she seeks in the instant action. FL 8-214 (c) addresses the considerations of the court prior to the award of suit money, legal fees, and costs. Specifically, the statute provides:

... In determining whether or not the court may order payment, the court shall consider:

(1) the financial resources and the financial needs of both parties; and

(2) whether there was substantial justification for prosecuting or defending the proceeding.

In the instant case, Plaintiff submits that even with the pendente lite alimony she has been awarded, she is unable to continue to pursue the present litigation without the award of attorneys fees and costs, as she has the mere combined monthly income from pension and alimony of one thousand six hundred sixty three dollars **($1663.00)**. Additionally, the Defendant's own stated monthly income of approximately eleven thousand two hundred nine dollars and fifty cents **($11,209.50)**, is sufficient income for the Court to award the Plaintiff costs and attorneys fees she requires to litigate the instant action to a proper and fair conclusion. Based upon the duration of marriage, namely, 41 years and six(6) months, Plaintiff submits that there is substantial justification for the instant litigation, such that the award of twenty thousand dollars **($20,000.00)**[1] in costs and legal fees to pursue the instant action is just and proper.

WHEREFORE Plaintiff respectfully requests:

A. That the trial in the instant matter be continued until the court schedules a hearing on the issue of reasonable and necessary expenses;

B. That Plaintiff be awarded twenty thousand dollars ($20,000.00) for costs and expert fees; and

C. And for such further relief as the nature of her cause may require.

---

[1] The costs and expenses which will be covered with the requested award of $20,000.00 will be presented at the requested hearing in this matter.

PLAINTIFF RESPECTFULLY REQUESTS A HEARING ON THE INSTANT MOTION.

Respectfully Submitted,

/s/ Sharon R. Herron

Sharon R. Herron
The Law Offices of
Johnny M. Riddick & Associates
505 Capitol Court N.E.
Suite 100
Washington, D.C. 20002
(202) 371-1933
Attorney for Plaintiff

FRANCES YOUNGER	*	IN THE
	*	
Plaintiff,	*	CIRCUIT COURT
	*	
v.	*	FOR
	*	
COLLIN L. YOUNGER SR.	*	PRINCE GEORGE'S COUNTY
Defendant	*	
	*	Case No. CAD01-29187

****

ATTORNEY CERTIFICATION IN LIEU OF AFFIDAVIT

I DO SOLEMNLY DECLARE AND AFFIRM under the penalties of perjury that the facts and matters contained in the foregoing motion are true to the best of my personal knowledge, information, and belief.

/s/ Sharon R. Herron

Sharon R. Herron
The Law Offices of
Johnny M. Riddick & Associates
505 Capitol Court N.E.
Suite 100
Washington, D.C. 20002
(202) 371-1933
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that on this 21st day of April, 2003, I mailed postage prepaid, a copy of the aforegoing motion to Paul Bauer Eason, Esquire, 7327 D Hanover Parkway. Greenbelt, Maryland 20770.

/s/ Sharon R. Herron

Sharon R. Herron

FRANCES YOUNGER	*	IN THE
	*	
Plaintiff,	*	CIRCUIT COURT
	*	
v.	*	FOR
	*	
COLLIN L. YOUNGER SR.	*	PRINCE GEORGE'S COUNTY
Defendant	*	
	*	Case No. CAD01-29187

****

ORDER

Upon consideration of Plaintiff's Motion for Continuance, and Supplemental Request for Modification of Pendente Lite Alimony Award to include Reasonable and Necessary Expenses, it is on this _____ day of _____, 2003 hereby

ORDERED that this matter be continued until the ____ day of _____, 2003, and it is further;

ORDERED that a Hearing on the issue of reasonable and necessary expenses be set for the _____, day of _____, 2003.

SO ORDERED.

_____

J U D G E

copies to:

Sharon R. Herron, Esquire
The Law Offices of
Johnny M. Riddick & Associates
505 Capitol Court NE
Suite 100
Washington, DC 20002
(202) 371-1933
Attorney for Plaintiff

Paul Bauer Eason, Esquire
7327-D Hanover Parkway
Greenbelt, Maryland 20770
(301) 220-0700
Attorney for Defendant

REAL ESTATE

1322 DOWNING PLACE, NE, WASHINGTON, DC

PURCHASE PRICE	ANNUAL INCREASE *	TOTAL VALUE (Estimated)	MORTGAGE BALANCE	
$83,686.00		$77,891.00		$68,388.20
Oct-86		Assessment Value 12/1989	Payments made May 1990 thru Oct 2002	
Est. VALUE				
$77,891.00	$15,813.00	$93,704.00	Sale Price 31 Oct 02	$128,000.00
Dec-89	$1,317.75 X 12 = $15,813.00	Jul-02	Settlement Fees and Charges	$10,444.00
	1990-2002 = 12 years	Assessment Value from	Pay Off Amount of Mortgage	$55,457.09
		Government of the Disctrict of Columbia, Taxpayer Service Center, Real Property Services	Losses - Not deducted from prior year taxes due to level of income and filing status.	$68,850.00
			Net Profit from Sale	$10,105.00

Exhibit 2

REAL ESTATE

14239 JIB ST., LAUREL, MD

PURCHASE PRICE	SALE PRICE	SETTLEMENT FEES	LOSS FROM SALE
$101,500.00	$97,500.00	$8,406.00	$12,406.00
Jan-90	Mar-01		

Exhibit 3

IN THE CIRCUIT COURT OF MARYLAND FOR PRINCE GEORGE'S COUNTY

FRANCES YOUNGER :

Plaintiff, :

vs. : Case No.: CAD01-29187

COLLIN YOUNGER, SR. :

Defendant. :

50a

JOINT STATEMENT OF PARTIES CONCERNING MARITAL AND NON-MARITAL PROPERTY

1. The parties agree that the following property is "marital property" as defined by Code, Family Law Article, Section 8-201:

Description of Property	How Titled	Fair Market Value	Liens, Debt, or Encumbrances Directly Attributable
1108 Ruatan St. Silver Spring, MD	Joint	$112,000.00	None
DC Metropolitan Police Federal Credit Union	H	$4,139.50	None
Citizen's Bank of Maryland	H	$1,448.00	None

2. The parties agree that the following property is not marital property because the property (a) was acquired by one party before marriage, (b) was acquired by one party by inheritance or gift from a third person, (c) has been excluded by valid agreement, or (d) is directly traceable to any of the these sources:

Description of Property	Reason Why Non-marital	How Titled	Fair Market Value	Liens, Debt, or Encumbrances Directly Attributable
VA Disability	Service related Injuries	H	Present day value Unknown	None
Frank Templeton Investments	Gift from father	H	$57,552.22	None
Security First Group Met Life	Gift from father	H	$10,904.42	None

Exhibit 1

Putnam Hartford Capital Manager	Gift from father	H	$37,990.00	None

3. The parties are not in agreement as to whether the following property is marital or non-marital:

Description of Property	How Titled	Fair Market Value	Liens, Debt, or Encumbrances Directly Attributable
Suntrust – Cert.of Deposit/IRA	H	$3,393.61	None
USAA IRA	H	$198.00	None
USAA – Checking Acc.	H	$1,334.29	None
SunTrust SunTrust Securities	H	$48,161.14	None
USAA – S&P 500 Index Fund	H	$18,549.95	None
GE Life and Annuity Assurance Company	H	$17,167.77	None
AXA Financial – Common Stock	H	$132.37	None
14227 Jib Street, Apt. 11	H and daughter	$89,000.00	$79,130.59
U.S. Army Retirement	H	Present day value unknown	None
DC Metropolitan Police Department Retirement	H	Present day value unknown	None
DC Deferred Comp	H	$78,578.00	None
USAA 401k	H	$7,632.00	None

CSRP (Wife's Retirement)	W	Present day value Unknown	None
1994 BMW	H	$1,0000.00	None

SHARON HERRON, ESQ
Attorney for Plaintiff
505 Capital Court, Suite 100
Washington, DC 2000[illegible]

PAUL BAUER EASON, ESQ
Attorney for Defendant
P.G.I.D.: EA0015
7327-D Hanover Parkway
Greenbelt, Maryland 20770
(301) 220-0700

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MAPQUEST

Advertisement

Send To Printer Back To Directions

Start: 7327 Hanover Pkwy
Greenbelt, MD
20770-3619 US

End: 600 Baltimore Ave
Towson, MD
21204-4034 US

Distance: 43.06 miles

Total Estimated Time: 44 minutes

Driving Directions	Distance
1. Start out going Northeast on HANOVER PKWY toward HANOVER DR.	0.40 Miles
2. Turn LEFT onto MD-193 W/GREENBELT RD.	0.07 Miles
3. Take the BALT. / WASH. PKWY. ramp toward BALTIMORE/BWI.	0.26 Miles
4. Merge onto MD-295 N.	19.89 Miles
5. Merge onto I-695 N/BALTIMORE BELTWAY INNER LOOP toward TOWSON.	21.24 Miles
6. Take the exit- exit number 26A- toward MD-45 S/YORK RD/TOWSON.	0.16 Miles
7. Turn LEFT onto WEST RD.	0.10 Miles
8. Turn RIGHT onto MD-45/YORK RD.	0.47 Miles
9. Turn RIGHT onto BOSLEY AVE.	0.36 Miles
10. Turn LEFT onto W ALLEGHENY AVE.	0.07 Miles

53a

(35)

Law Office of Paul Bauer Eason

Attorney At Law
Hanover Office Park
7327-D Hanover Parkway
Greenbelt, Maryland 20770
Telephone: (301) 220-0700
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FAX TRANSMITTAL PAGE

DATE:	April 11, 2003
TO:	Sharon Herron Esquire
FAX#:	202-371-8332
NUMBER OF PAGES (including cover):	
SENDER:	Ryan
VOICE#:	(301) 220-0700
FAX#:	(301) 220-3747
MESSAGE:	Re: Younger V. Younger
	Protective Order as requested

Confidentiality Note

The documents accompanying this telecopy transmission contain information from the law office of Paul Bauer Eason, which is confidential and / or legally privileged. The information is intended only for the use of the individual or entity named on the transmission sheet. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance on the contents of this telecopy transmission is strictly prohibited, and that the documents should be returned to this office immediately. In this regard, if you have received this telecopy in error, please notify us by telephone immediately so that we can arrange for the return of the original documents to us at no cost to you.

IN THE CIRCUIT COURT OF MARYLAND FOR PRINCE GEORGE'S COUNTY

FRANCES YOUNGER	*	**FILED**
	*	APR 10, 2003
Plaintiff,	*	Clerk of the
	*	Circuit Court
v.	*	Prince George's
	*	County, MD
COLLIN L. YOUNGER SR.	*	
	*	Case No.: **CAD01-29187**
Defendant,	*	

MOTION FOR A PROTECTIVE ORDER AND EXPEDITED RELIEF

COMES NOW, Defendant, **COLLIN L. YOUNGER, SR.**, by and through undersigned counsel, **PAUL BAUER EASON**, and moves this Honorable Court pursuant to Maryland Rule 2-403(a) for the issuance of a Protective Order, and for reasons states as follows:

1. On March 11, 2003, this Honorable Court passed an Order which provided *inter alia* that, "the Defendant will appear for deposition on a convenient date on or before April 15, 2003. Said deposition may be by telephone, video, or in person in Texas at Plaintiff's option..." There is nothing ambiguous in the Court's Order. In short, it is simply provided, that the Plaintiff could depose the Defendant any time before April 15, 2003. Clearly, the re-noting of the deposition would have to be in conformance with the Maryland Rules of Civil Procedure.

2. When counsel for the Defendant arrived in his office on Wednesday, April 9, 2003, he found a faxed notice of deposition, which on its face notes the Defendant's depositor with only six (6) days notice. Maryland Rule 2-412 provides

in pertinent part, that "a person desiring to take a deposition shall serve a notice of deposition upon oral examination at least ten days before the date of the deposition..." Relatedly, there is no provision in the Maryland Rules for faxed service, and even if there were, the deposition has not been timely noted.

3. Finally, the Defendant desires that undersigned counsel represent him in all discovery proceedings. According to the Notice of Deposition, he will, "need to travel to Gore Brothers Reporting Company, 600 Baltimore Avenue, Suite 604, Towson, Maryland 21204," which is north of Baltimore City and more than 43 miles away from counsel's office. (See correspondence from Sharon Herron dated April 8, 2003 and the attachment from MapQuest.)

WHEREFORE, the above premises considered, the Defendant, **COLLIN L. YOUNGER, SR.**, pray that this Honorable Court:

A. Grant his Motion for a Protective Order and Expedited Relief;

B. Enter a Protective Order quashing the Notice of Deposition;

C. And for such other and further relief as the nature of his cause may require.

Respectfully submitted,

/s/ PAUL BAUER EASON, ESQ

PAUL BAUER EASON, ESQ
P.G.I.D.: EA0015
7327-D Hanover Parkway
Greenbelt, Maryland 20770
(301) 220-0700

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Motion for a Protective Order was faxed and mailed postage prepaid, this 9th day of April, 2003, to Counsel for the Plaintiff, Sharon R. Herron, Esq., Johnny M. Riddick and Associates, 505 Capitol Court, N.E., Suite 100, Washington, D.C. 20002.

_____

PAUL BAUER EASON, ESQ

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CONSTITUIONAL PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides:

No person... shall... be deprived of life, liberty, or property, without due process of law...

The Fourteenth Amendment to the United States Constitution provides:

. . . No State shall make or enforce any law which shall abridge the priviliges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law...

MARYLAND STATE STATUTES INVOLVED

Ann. Code. Md. FAMILY LAW Section 8-201 Property Disposition in Annulment and Divorce (1999) in pertinent part provides:

(e) **Marital property.**

(1) "Marital Property" means property, however titled, acquired by 1 or both parties during the marriage.

(2) "Marital Property" includes any interest in real property held by the parties as tenants by the entirety unless the real property is excluded by valid agreement.

(3) "Marital Property" does not include property;

(i) acquired before the date of marriage;
(ii) acquired by inheritance or gift by a third party;
(iii) excluded by valid agreement; or
(iv) directly traceable to any of these sources.

Ann. Code Md. FAMILY LAW Section 8-204 (1999). **Valuation.**

(a) ***Determination by court***—Except as provided in subsection (b) of this section, the court shall determine the value of all marital property.

(b) ***Retirement benefits***—(1) The court need not determine the value of a pension, retirement, profit sharing, or deferred compensation plan, unless a party has given notice in accordance with paragraph (2) of this subsection that the party objects to a distribution of retirement benefits on an "if, as, and when" basis.

(2) If a party objects to the distribution of retirement benefits on an "if, as, and when" basis and intends to present evidence of the value of the benetifs, the party shall give written notice at least 60 days before the date the joint statement of the parties concerning marital and nonmarital property is required to be filed under the Maryland Rules. If notice is not given in accordance with this paragraph, any objection to a distributioon on an "if, as, and when" basis shall be deemed to be waived unless good cause is shown. (CJ § 3-6A-05; 1984, ch.296, § 2; 1994, ch. 653.)

Ann. Code Md. FAMILY LAW Section 8-205. **Monetary award in pertinent part provides (1999)**:

(a) ***Grant of award***—Subject to the provisions of subsection (b) of this section, after the court determines which propert is marital property, and the value of the marital property, the court may transfer ownership of an interest in pension, retirement, profit sharing, or deferred compensation plan from 1 party to either or both parties, grant a monetary award, or both, as an adjustment of the equities and rights of the parties concerning marital property, whether or not alimony is awarded.

(b) ***Factors in determining amount and method of payment or terms of transfer.***— The court shall determine the amount and the method of payment of monetary award, or the terms of the transfer of the interest in the pension, retirement, profit sharing, or deferred compensation plan, or both, after considering each of the following factors:

(1) the contributions, monetary and nonmonetary, of each party to the well-being of the family;

(2) the value of all property interests of each party;

(3) the economic circumstances of each party at the time the award is to be made;

(4) the circumstances that contributed to the estrangement of the parties;

(5) the duration of the marriage;

(6) the age of each party;

(7) the physical and mental condition of each party;

(8) how and when specific marital property or interest in the pension, retirement, profit sharing, or deferred compensation plan, was acquired, including the effort expended by each party in accumulating the marital property or the interest in the pension, retirement, profit sharing, or deferred compensation plan, or both;

(9) the contribution by either party of property described in § 8-201 (e)(3) of this subtitle to the acquisition of real property held by the parties as tenants by the entirety;

(10) any award of alimony and any award or other provision that the court has made with respect to family use personal property or the family home;and

(11) any other factor that the court considers necessary or appropriate to consider in order to arrive at a fair and

equitable monetary award or transfer of an interest in the pension, retirement, profit sharing, or deferred compensation plan, or both.

(c) ***Award reduced to judgment.***— The court may reduce to a judgment any monetary award made under this section, to the extent that any part of the award is due and owing. (CJ § 3-6A-05; 1984, ch. 296, § 2;1986, ch.765;1994, ch. 462)

Ann. Code. Md. FAMILY LAW Section 8-214. **Award of reasonable and necessary expenses** (1999) in pertinent part provides:

(a) Definition.— In this section, "reasonable and necessary expense" includes:

(1) suit money;
(2) counsel fees; and
(3) costs.

(b) ***Award authorized.*** — At any point in a proceeding under this subtitle, the court may order either party an amount for the reasonable and necessary expense of prosecuting or defending the proceeding.

(c) *Considerations by court.*— Before odering the payment, the court shall consider:

(1) the financial resources and financial needs of both parties; and

(2) whether there was substantial justification for pprosecuting or defending the proceeding.

(d) *Lack of substantial justification and good cause.*— Upon a finding by the court that there was an absence of substantial justification of a party for prosecuting or defending the proceeding, and absent a finding by the court

of good cause to the contrary, the court shall award to the other party the reasonable and necessary expense of prosecuting or defending the proceeding.

(e) *Reimbursement* — The court may award reimbursement for any reasonable and necessary expense that has previously been paid.

(f) *Counsel fees.*— As to any amount awarded for counsel fees, the court may:

(1) order that the amount awarded be paid directly to the lawyer; and

(2) enter judgment in favor of the lawyer. (1999, ch.391).

Ann. Code. Md. COURT AND JUDICIAL PROCEEDINGS Section 12-303. Appeals from certain interlocutory orders (1999) in pertinent part provides:

> [Appeals from Certain Interlocutory Orders] provides:
>
> A party may appeal from any of the following orders entered by a [C]ircuit [C]ourt in a civil case:
>
> (1) An order entered with regard to the possession of property with which the action is concerned or with reference to the receipt or charging of the income, interest, or dividends therefrom, or the refusal to modify, dissolve, or discharge such an order;
>
> (2) An order granting or denying a motion to quash a writ of attachment; and

(3) An order:

(i) Granting or dissolving an injunction, but if the appeal is from an order granting an injunction, only if the appellant has first filed his answer in the cause;

(ii) Refusing to dissolve an injunction, but only if the appellant has first filed his answer in the cause

(iii) Refusing to grant an injunction; and the right of appeal is not prejudiced by the filing of an answer to the bill of complaint or petition for an injunction on behalf of any opposing party, nor by the taking of deposition in reference to the allegations of the bill of complaint to be read on the hearing of the application for an injunction;

(iv) Appointing a receiver but only if the appellant has first filed his answer in the cause;

(v) For the sale, conveyance, or delivery of real or personal property or the payment of money, or the refusal to rescind or discharge such an order, unless the delivery or payment is directed to be made to a receiver appointed by the court;

(vi) Determining a question of right between the parties and directing an account to be stated on the principle of such determination;

(vii) Requiring bond from a person to whom the distribution or delivery of property is directed, or withholding distribution or delivery of property is directed, or withholding distribution or delivery and ordering the retention or accumulation of property by the fiduciary and ordering the trustee or receiver, or deferring the passage of the court's

decree in action under Title 10, Chapter 600 of the Maryland Rules;

(viii) Deciding any question in an insolvency proceeding brought under Title 15, Subtitle 1 of the Commercial Law Article;

(ix) Granting a petition to stay arbitration Pursuant to Section 3-208 of this article;

(x) Depriving a parent, grandparent, or natural guardian of the care and custody of his child, or changing the

Terms of such an order; and

(xi) Denying immunity asserted under section 5-525 or section 5-526 of this article.

Md. R. Civ. Proc. **FAMILY LAW ACTIONS** Section 9-207 Joint Marital Property Statement (2003) in pertinent part provides:

(a) **When required.** When a monetary award or other relief pursuant to Code, Family Law Article,§ 8—205 is an issue, the parties shall file a joint statement listing all property owned by one or both of them.

(b) **Form of property statement.** The joint statement shall be in substantially the following form: **(See App. at____)**

2. The parties agree that the following property is not marital property because the property (a) was acquired by one party before marriage, (b) was acquired by one party by inheritance or gift from a third person,

(c) has been excluded by valid agreement, or
(d) is directly traceable to any of those sources:

INSTRUCTIONS:

1. If the parties do not agree about the title or value of any property, the parties shall set forth in the appropriate column a statement that the title or value is in dispute and each party's assertion as to how the property is titled or the fair market value.

2. In listing property that the parties agree is non-marital because the property is directly traceable to any of the listed sources of non-marital property, the parties shall specify the source to which the property is traceable.

(c) **Time for filing; procedure.** The joint statement shall be filed at least ten days before the scheduled trial date or by any earlier date fixed by the court. At least 30 days before the joint statement is due to be filed, each party shall prepare and serve on the other party a proposed statement in the form set forth in section (b) of this Rule. At least 15 days before the joint statement is due, the plaintiff shall sign and serve on the defendant for approval and signature a proposed joint statement that fairly reflects the positions of the parties. The defendant shall timely file the joint statement, which shall be signed by the defendant or shall be accompanied by a written statement of the specific reasons why the defendant did not sign.

(d) **Sanctions**. If a party fails to comply with this Rule, the court, on motion or on its own initative, may enter any orders in regard to the noncompliance that are just, including:

(1) an order that property shall be classified as marital or non-marital in accordance with the statement filed by the complying party;

(2) an order refusing to allow the noncomplying party to oppose designated assertions on the complying party's statement filed pursuant to this Rule, or prohibiting the noncomplying party from introducing designated matters in evidence.